



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD) No.10061 of 2016 and

CRL.M.P. (MD) Nos.5034 & 5035 of 2016

WEB COPY

Dr. Priya,
Assistant Professor,
Institute of Community Medicine,
Madurai Medical College,
Madurai.

... Petitioner/Accused No.2

Vs.

1. The Inspector of Police,
Samayanallur police station,
Samayanallur,
Madurai District.

...1st Respondent/Complainant

2. Poongodi

...2nd Respondent/Defacto
Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in S.C.No.179 of 2016 pending on the file of the Mahila Court, Madurai and quash the same.

(Prayer is amended vide order dated 16.06.2016 in Crl.M.P. (MD) No.4809 of 2016 in Crl.O.P. (MD) SR.No.15871 of 2016.)

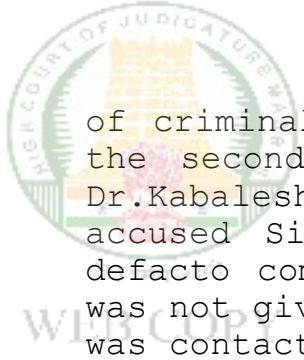
For Petitioner	: M/s.D.Geetha
For R-1	: Mr.A.Robinson, Government Advocate (Crl. Side)
For R-2	: Mrs.Poongodi, Party-in-person.

* * *

ORDER

The petitioner is figuring as the second accused in S.C.No.179 of 2016 on the file of the Mahila Court, Madurai, for the offences under Sections 313, 314, 315, 506(ii), 120(B) and 167 of I.P.C.

2. The defacto complainant in this case is Mrs.Poongodi. She is shown as the second respondent in this criminal original petition. She also appeared in person. The case of the prosecution is that the second respondent got admitted in the Primary Health Centre, Samayanallur on 20.03.2010 and that on 21.03.2010, the petitioner herein along with the fifth accused and one nurse Devasena asked her to leave the hospital and also held out threats

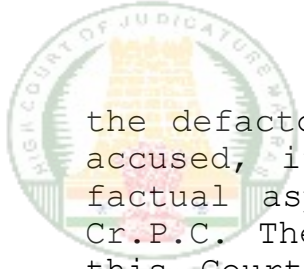


of criminal intimidation. They had threatened that they would kill the second respondent as well as the child. The first accused Dr.Kabaleshwari is also said to have come along with the sixth accused Siraiselvam and intimidated the defacto complainant. The defacto complainant who remained in the said Primary Health Centre was not given any treatment. When the first accused Dr.Kabaleshwari was contacted, she is said to have told that the defacto complainant will not receive any treatment in the Primary Health Centre, Samayanallur. According to the prosecution, on 27.03.2010 she was discharged and admitted in Madurai Government Rajaji Hospital. The defacto complainant delivered a girl child. The condition of the child was fairly serious and the child was kept in ICU for two days and it died thereafter. The defacto complainant herein thereupon lodged a criminal case before the Inspector of Police, Samayanallur police station in April 2010. The defacto complainant would allege that her complaint was not taken on file. Hence she had to move the Madurai Bench of Madras High Court and thereafter a direction was issued. The First Information Report came to be registered for the offences under Sections 313, 314, 315, 506(ii), 120(B) and 167 of I.P.C. The case was taken up for investigation and charge sheet was filed before the jurisdictional Magistrate. The case was later committed to the Sessions Court and it was made over to the Mahila Court in S.C.No.179 of 2016. At this stage the petitioner herein has filed this criminal original petition under Section 482 of Cr.P.C. for quashing the impugned proceedings as far as she is concerned.

3. The learned counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds. She placed reliance on the decision reported in (2005) 6 SCC 1 (Jacob Mathew V. State of Punjab).

4. The learned Government Advocate(Crl. Side) submitted that the case on hand rests on factual aspects and that therefore this is not a case fit for invoking the inherent powers of this Court. The learned Government Advocate(Crl. Side) adopted the stand taken by the defacto complainant who appeared in person.

5. The defacto complainant primarily contended that the first accused Dr.Kabaleshwari filed Crl.O.P.(MD)No.23708 of 2015 before this Court for quashing the impugned proceedings, when they were at the committal stage. Vide order dated 22.01.2016, the said criminal original petition was dismissed. The learned Judge took the view that an expert committee of Madurai Government Rajaji Hospital filed a report on 30th November 2011 and gave a finding that they did not find any negligence on the part of the medical staff. But an earlier report given by Dr.A.Palanisamy is otherwise. The defacto complainant had obtained a copy of the said report by invoking the provisions of the Right to Information Act. The said report holds that the allegations made by the defacto complainant herein stood proved. The learned Judge who disposed of Crl.O.P.(MD) No.23708 of 2015, therefore came to the conclusion that in as much as there are two reports, one holding that the allegations made by



the defacto complainant stood proved while the other exonerates the accused, it would not be safe for the High Court to go into the factual aspects in exercise of jurisdiction under Section 482 of Cr.P.C. The defacto complainant therefore contended that when once this Court had already come to the conclusion that the impugned proceedings do not deserve to be quashed and that they should be expedited, it would not be open to this Court to come to the conclusion that the proceedings deserve to be quashed.

6. The defacto complainant would also contend that though as per Jacob Mathew decision, there must be taking of expert opinion before initiating the prosecution against a medical professional, such a requirement must be assumed to have been fully satisfied in view of the availability of the report of Dr.A.Palanisamy. The defacto complainant would also strongly contend that the petitioner herein was a qualified Gynecologist who was duty bound to treat her and by not treating her, she had failed in her duty as a duty doctor and that therefore applying Dr.A.Palanisamy's report, the petitioner must be held culpable. She would also claim that the petitioner had tampered with her leave application. The defacto complainant would also argue that her's was a love marriage and that therefore, due to community pressure the medical personnel of the Primary Health Centre at Samayanallur have conspired against her resulting in the death of her infant child. The defacto complainant strongly pleaded that this criminal original petition has to be dismissed.

7. I carefully considered the rival contentions and went through the entire materials on record.

8. Charges have been framed against all the accused under Sections 313, 314, 315, 506(i), 120(B) and 167 of I.P.C. In this case, it is admitted that the defacto complainant delivered a child on 28.03.2010 at 12.20 a.m. It was kept in ICU and it died there two days later. When the child was born alive and it died only two days later, the question of miscarriage does not arise at all. Therefore, the offences set out in Sections 313 and 314 of I.P.C. are not attracted. The elementary ingredients of these offences are wholly absent. Section 315 of I.P.C. penalises any act done with intent to prevent the child being born alive or to cause it to die after birth. The birth of the girl child is not disputed. The petitioner herein was not associated with the delivery of the child at all. In fact she was on leave during the relevant time. Therefore, by no stretch of imagination Section 315 of I.P.C. can be invoked against the petitioner herein. The offence under Section 167 of I.P.C. can be attracted only if it is shown that the public servant has framed an incorrect document with intent to cause injury. In this case it is beyond dispute that the petitioner herein was on leave on 26.03.2010 to 28.03.2010. In fact she had given a leave application as early as on 22.03.2010 and the same was also duly sanctioned. If the petitioner had an intention to cause injury to the defacto complainant, she would not have applied for leave. Likewise I find the allegations of criminal intimidation to be rather farfetched. If



the doctor had an intention to cause injury to the defacto complainant, they would not be asking her to get discharged and get admitted in Madurai Government Rajaji Hospital. Even according to the defacto complainant, from the early days of her pregnancy the medical professional attached to the said Primary Health Centre were taking proper care of her. That is why the defacto complainant got herself admitted in the Primary Health Centre on 21.03.2010. Considering her medical condition, in all good faith, the staff had advised her to get admitted in Madurai Government Rajaji Hospital. The allegations regarding criminal intimidation as well as conspiracy are inherently improbable and absurd.

9. It is true that the enquiry report of Dr.A.Palanisamy found the allegations of the defacto complainant as proved. I carefully went through the entire report. The learned counsel appearing for the petitioner would state that the medical professionals of Samayanallur Primary Health Centre had been requesting Dr.A.Palanisamy who was the then Deputy Director of Health Services, Madurai, to issue instruction for transferring the defacto complainant to Madurai Government Rajaji Hospital. He had remained totally indifferent to their request. After the issue took a serious turn, he conveniently shifted the entire blame on the medical personnel of Samayanallur Primary Health Centre.

10. If the report of Dr.A.Palanisamy is compared with the subsequent report dated 30.11.2011, one can notice that while the report of Dr.A.Palanisamy does not refer to the medical aspects at all, the report dated 30.11.2011 approaches the issue from a technical perspective. I do not want to make any further comment on the report of Dr.A.Palanisamy. I am satisfied that the continuance of the impugned prosecution against the petitioner herein can only be termed as an abuse of legal process. Therefore, the impugned prosecution stands quashed as far as the petitioner is concerned. This criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To:

1. The Judge,
Mahila Court, Madurai.
2. The Inspector of Police,
Samayanallur police station,
Samayanallur,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.GEETHA, Advocate SR-5485.

Cr1.O.P.(MD)No.10061 of 2016
06.02.2020

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